

APPEAL NO. 041946  
FILED SEPTEMBER 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 13, 2004. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury on \_\_\_\_\_, includes osteomyelitis and discitis at T5-6, and that the claimant had disability for the period beginning on December 2, 2003, and continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the claimant failed to introduce medical evidence establishing a causal connection between discitis and osteomyelitis at T5-6 and the original lumbar injury. The carrier also disputed the disability determination. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. At issue was whether the compensable injury included osteomyelitis and discitis at T5-6 and whether the claimant had disability from December 2, 2003, through the date of the CCH. The hearing officer specifically found that the claimant's \_\_\_\_\_, compensable injury required an epidural steroid injection as part of his treatment, which became infected, and caused an infectious lesion of osteomyelitis and discitis in his lumbar spine that has now spread to his thoracic spine.

Both Dr. F and Dr. L testified at the hearing and medical reports from Dr. F were in evidence. The carrier contended that the opinions of Dr. F and Dr. L could not be used to support the hearing officer's decision because they are "not qualified to diagnose or treat this condition." It was the province of the hearing officer in making his factual determination to weigh the relative qualifications of the medical experts and to determine what weight to give their opinions. The hearing officer was persuaded that the evidence established causation of the infection from medical treatment of the claimant's injury. Additionally, there was documentary evidence from Dr. S, which stated that there was no evidence that the claimant had a preexisting condition or underlying disease of life prior to the \_\_\_\_\_, compensable injury and that the effects of the compensable injury continued with thoracolumbar pain.

The issue of whether the subsequent injury was caused by the compensable injury, or the proper and necessary treatment of it, is generally one of fact. See Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; Texas Workers' Compensation Commission Appeal No. 93855, decided November 9, 1993. The claimant had the burden to prove a causal connection by expert medical evidence to a reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993. The hearing officer is

the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence, Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, Tex.App.-Houston [14th Dist.] 1984, no writ. The hearing officer was acting within his province in resolving those conflicts in favor of the claimant.

The claimant had the burden to prove that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH. The hearing officer noted that the evidence indicates that the claimant has continuing restrictions and could not return to his preinjury employment. Additionally, the hearing officer was persuaded that the report from Dr. S supported both the work restrictions and work causation of the claimant's continued medical problems. There is sufficient evidence to support the hearing officer's disability determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Edward Vilano  
Appeals Judge